

OCA FILE

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MEMORANDUM FOR THE RECORD

SUBJECT: Consultant Registration and Reform Act (S. 2674):
Review and Comment by PMS

1. By memorandum of 3 August 1988, the Office of Congressional Affairs asks for review and comment on a bill titled the Consultant Registration and Reform Act of 1988. This bill would require comprehensive reporting requirements on government agencies and consultants concerning contracts for consulting services. In addition this proposed legislation would grant increased public access to information concerning consulting contracts.

2. Notwithstanding the exemptive provisions contained in section 13 of the bill there are still some problems because "sensitive foreign intelligence" is not defined, nor is there an exemption for "intelligence related activities." To avoid the risk of losing a contract a consultant may tend to over report rather than not report.

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3. This bill needs to be amended with an additional safeguard by exempting all consultant contracts with any agency in the intelligence community. With the wholesale exemption we don't have to deal with definitional problems, nor do we have to worry about the gap in the bill by failure to include "intelligence related activities." We recommend amending sections 10 and 13 of the bill by adding a new subparagraph at the end sections 10 and 13 to read as follows:

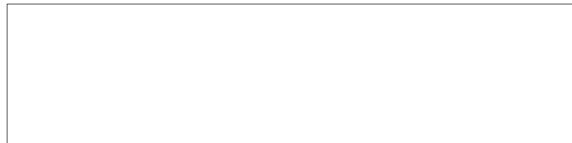
(4) involves an Agency or component of an agency as described in section 3.1 of Executive Order 12333.

4. The advantage of taking this approach is that we will have the backing of the entire intelligence community. Our oversight committees are more likely to go to bat for us if we speak for the intelligence community through this amendment. By the use of the word "involves" the exemption would also cover subcontracts.

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5. I conveyed this information by phone to (OCA) on
17 August 1988.

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Procurement Management Staff

(a) *Counterintelligence* means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document or communications security programs.

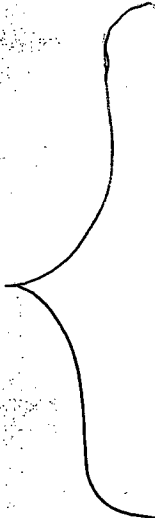
(b) *Electronic surveillance* means acquisition of a nonpublic communication by electronic means without the consent of a person who is a party to an electronic communication or, in the case of a nonelectronic communication, without the consent of a person who is visibly present at the place of communication, but not including the use of radio direction-finding equipment solely to determine the location of a transmitter.

(c) *Employee* means a person employed by, assigned to or acting for an agency within the Intelligence Community.

(d) *Foreign intelligence* means information relating to the capabilities, intentions and activities of foreign powers, organizations or persons, but not including counterintelligence except for information on international terrorist activities.

(e) *Intelligence activities* means all activities that agencies within the Intelligence Community are authorized to conduct pursuant to this Order.

(f) *Intelligence Community and agencies within the Intelligence Community* refer to the following agencies or organizations:

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- (1) The Central Intelligence Agency (CIA);
 - (2) The National Security Agency (NSA);
 - (3) The Defense Intelligence Agency (DIA);
 - (4) The offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;
 - (5) The Bureau of Intelligence and Research of the Department of State;
 - (6) The intelligence elements of the Army, Navy, Air Force, and Marine Corps, the Federal Bureau of Investigation (FBI), the Department of the Treasury, and the Department of Energy; and
 - (7) The staff elements of the Director of Central Intelligence.

(g) *The National Foreign Intelligence Program* includes the programs listed below, but its composition shall be subject to review by the National Security Council and modification by the President:

XII-20

19 February 1982